

FlorStar Sales, Inc. and Darryl Lindquist and Timothy Linstrom and Local 337 International Brotherhood of Teamsters, AFL-CIO. Cases 7-CA-38599 and 7-CA-39070

July 30, 1998

DECISION AND ORDER

BY MEMBERS LIEBMAN, HURTGEN, AND BRAME

On November 28, 1997, Administrative Law Judge Karl H. Buschmann issued the attached decision. The General Counsel filed exceptions and a supporting brief. The Respondent filed exceptions and a brief in response to the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The National Labor Relations Board has considered the decision¹ and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order as modified.³

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, FlorStar Sales, Inc., Livonia, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(e):

"(e) Within 14 days after service by the Region, post at its facility in Livonia, Michigan, copies of the attached notice marked 'Appendix.'² Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all

¹ By Order dated February 27, 1998, the Board granted a motion to sever Case 7-RC-20817 from this proceeding.

² The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

There are no exceptions to the judge's findings of unfair labor practices.

³ In its exceptions, the Respondent states that, since the issuance of the judge's decision, it has relocated its Taylor, Michigan operation to a facility in Livonia, Michigan and transferred the former Taylor employees to that location. Because this statement is uncontroverted, we shall modify par. 2(e) of the Order to reflect the change in location. Further, in accord with *Excel Container*, 325 NLRB No. 14 (Nov. 7, 1997), we shall change the triggering date of the Respondent's notice-mailing obligation in that same paragraph to May 9, 1996, the date of the first unfair labor practice.

places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered over by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 9, 1996."

Dwight R. Kirksey, Esq., for the General Counsel.

Alex V. Barbour, Esq. (Jenner & Block), of Chicago, Illinois, for the Respondent.

George R. Geller, Esq., of Farmington Hills, Michigan, for the Union.

DECISION

STATEMENT OF THE CASE

KARL H. BUSCHMANN, Administrative Law Judge. This case was tried in Detroit, Michigan, on December 16 through 18, 1997, on a consolidated complaint, dated October 25, 1996. The charges in Case 7-CA-38599 were filed on May 31, 1996 by Darryl Lindquist and by Timothy Linstrom in Case 7-CA-39070 on October 7, 1996, charging the Respondent, FlorStar Sales, Inc., with violations of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act).

The Union, Local 337, International Brotherhood of Teamsters, AFL-CIO, filed a petition in Case 7-RC-20817 on March 29, 1996 which, pursuant to an Stipulated Election Agreement and a second election, resulted in a tied vote and a challenged ballot.

The Respondent filed an answer on November 6, 1996, admitting the jurisdictional allegations in the complaint, including the status of Timothy Linstrom as an agent within the meaning of Section 2(13) of the Act. The Respondent denied the substantive allegations in the complaint.

On the entire record in this case and after consideration of the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

FlorStar Sales, Inc., a Delaware corporation headquartered in Livonia, Michigan, is engaged in the wholesale floor covering business, whose products are distributed in areas of Illinois, Michigan, Minnesota, Ohio, Indiana, and Wisconsin and other areas. FlorStar Sales, Inc. maintains a facility in Taylor, Michigan, which is managed by a local manager who reports to a regional manager or Respondent's chief operating officer, Joel DeAngelo. With gross revenues in excess of \$500,000 and with purchases of goods and supplies in excess of \$50,000 to the Taylor, Michigan facility from points located outside the State, the Respondent is admittedly an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Union, Local 337, International Brotherhood of Teamsters, AFL-CIO, is admittedly a labor organization within the meaning of Section 2(5) of the Act.

II. BACKGROUND

In early 1996, when about seven employees, classified as truckdrivers or warehousemen worked at the Taylor facility, Darryl Lindquist, a truckdriver, contacted Local 337. He obtained and distributed union authorization cards.

The Union filed a petition on March 29, 1996, and a Stipulated Election Agreement was executed by the parties in the following appropriate collective-bargaining unit:

All full-time and regular part-time warehouse employees and drivers employed by the Employer at its facility located at 26990 Trolley Industrial Drive, Taylor, Michigan, but excluding all office clerical employees, sales representatives, guards and supervisors as defined in the Act.

The Employer filed objections to conduct affecting the results of the election held on May 10, 1996. A second election approved by the Labor Board was conducted on July 26, 1996. The tally of ballots, showed that among approximately six eligible voters, not counting one challenged ballot, three votes were cast in favor of the Union and three for the Employer. The challenged ballot belonged to Darryl Lindquist who was discharged on May 31, 1996, ostensibly because he threatened employees and company property.

The Company stands accused of 8(a)(1) violations by soliciting employee grievances, repeatedly coercively interrogating employees, threatening them with loss of jobs and discharge, coercively soliciting written statement from employees, and threatening them with legal action if they refused. The Company also stands accused of unlawfully discharging its employees, Darryl Lindquist and Timothy Linstrom. In support of its case, the General Counsel called four witnesses, employee Darryl Lindquist who testified about the union campaign and the circumstances of his discharge, employees John Grunas and Larry Kovalski who testified about the company's reaction about the union activity at the plant, as well as their knowledge of any threats made by Lindquist against employees or company property. The fourth witness was Timothy Linstrom who testified about the circumstances of his replacement as the warehouse manager.

The witnesses for the Respondent, Anthony Buscareno, corporate logistics manager, Denise Longtin, human resource manager, Wade Cassidy, president, and Joel DeAngelo, chief operating officer, testified about the Company's business and its conduct during the union campaign. In addition, testifying for the Respondent, were attorneys Scott Rozmus and Kenneth Dolin who actively participated in the union campaign on behalf of the Respondent, by conducting an investigation as to whether employees made certain threats. Employee Timothy Nelson also testified for the Respondent.

The testimony presents the basic scenario where the employees began a union drive in a small unit of employees consisting of no more than seven employees. The Company reacted with a strong antiunion campaign, which in several respects went beyond legitimate bounds of conduct.

The 8(a)(1) Allegations

The record contains extensive testimony about interrogations, threats, and other unlawful conduct which the Respondent argues is barred by Section 10(b) of the Act. The Respondent is correct that apart from the charges involving the alleged discrimination against Lindquist in violation of Section 8(a)(3) of the Act and the 8(a)(1) allegations involving the discharge of Linstrom, as warehouse manager, the independent 8(a)(1) allegations are not supported by any charges. Their consideration can only be justified by a finding that these allegations are "closely related" to the 8(a)(1) and (3) allegations referred involving the discharges of Linstrom and Lindquist. *Redd-I, Inc.*, 290 NLRB 1115 (1988). Here, it is clear that the 8(a)(1) charge in support of Linstrom's discharge is the same section of the Act as the 8(a)(1) allegations of the challenged allegations. Secondly, these allegations involve factually similar conduct. For example, Linstrom is alleged to have been replaced because he refused to commit unfair labor practices, i.e. of the kind committed by other supervisors as they accompanied the drivers to solicit their grievances and to interrogate them. Finally, the Respondent disputes that supervisors solicited grievances or interrogated employees. Moreover, it is clear that the allegations factually and legally arise out of the union drive and the Respondent's vigorous reaction to quell them. I accordingly find that Section 10(b) does not support a dismissal of the 8(a)(1) allegations.

In reaction to the union campaign, the Respondent's highest executive, DeAngelo, and attorney Dolin held weekly meetings with Linstrom concerning a strategy to defeat the Union. The Respondent also decided to have supervisors ride in the trucks with the drivers as they went about their work. Cassidy, DeAngelo, and Linstrom rode with all drivers at the Taylor facility except with Lindquist whose sympathy for the Union was regarded as unshakable.

Employee John Grunas testified that Linstrom and Cassidy rode with him in his truck on several occasions. On his trip with Linstrom, the Union was barely discussed. However, when Cassidy rode in his truck on May 9 or 10, 1996, Cassidy brought up the Union during the day-long ride. According to Grunas, Cassidy wanted "to try and find out some of the gripes and complaints that the employees had." Grunas responded suggesting that the trucks should have lift gates and air conditioning. Cassidy asked his opinion of the Union and what he "felt and what the people thought they would gain from a union" and "if anybody was pushing anybody to work for it or against the Union." Cassidy also said that one of the employees, named Herschel Stacey, would no longer have a job if the Union got in, because of his inferior driving record.

The Respondent argues that Grunas' testimony in this regard was unreliable because of his general inability to recall details and that Cassidy's testimony was more credible. To be sure, Grunas may not have remembered some of the details, but he did not impress me as someone who invented matters or lied about the subject of the inquiry. From my observation of his demeanor, he made a sincere effort to recall the significant events and the substance of the conversations. As a current employee for the Respondent he had nothing to gain by testifying in this regard. Cassidy, in contrast, made a deliberate effort to explain away his conduct, and he made an obvious attempt to protect the Respondent. I accordingly

find that Cassidy's conduct included the soliciting of employee grievances, coercive interrogation of an employee and a threat to an employee with the loss of his job. That the atmosphere was coercive cannot be gainsaid, when the highest or second highest company executive spent an entire working day with the employee, one on one and in close proximity in the cab of a truck, immediately prior to the election without any other purpose than to influence the individual's choice involving the union election. Solicitation of grievances from employees during a union campaign, a threat that an employee would lose his job because of the Union and coercively interrogating an employee about the Union violate Section 8(a)(1) of the Act.

The allegations in the complaint that on about May 14, 1996, the Respondent coercively interrogated employees was supported by testimony of Larry Kovaleski. He testified that on about May 14, 1996, Linstrom called him into his office and set up a conference call because Cassidy wanted to speak to him. During the conversation, Cassidy asked Kovaleski whether Lindquist had made any threats to either employees or company property. Kovaleski responded that Lindquist had made comments, such as, he "would kick [Kovaleski's] ass" and remarks about "tires being flattened." Cassidy instructed him to record these remarks and write them down on paper. According to Kovaleski, Cassidy interrupted repeatedly when Kovaleski attempted to explain that Lindquist's comments were made in jest.

Kovaleski testified that during the same conversation, Cassidy asked him "who started the campaign for the Union" and "who signed . . . Union cards" (Tr. 95-96). Kovaleski said that Lindstrom started the campaign and that all except Dennis Boynton had signed cards. Kovaleski testified that he wrote Lindquist's remarks on a piece of paper and handed it to Lindquist (R. Exh. 3).

Kovaleski's testimony does not show that Linstrom had engaged in any coercive interrogations, but the questioning by Cassidy about the union campaign, would implicate him, if Kovaleski's testimony is credited. Both, Cassidy and Linstrom who was present during the conversation, testified however, that the interrogations about the Union did not occur. I find their testimony, more convincing and credible. I accordingly find that these allegations in the complaint were not substantiated.

The next allegations in the complaint are that on May 10 and May 16, 1996, the Respondent engaged in coercive interrogations of the employees, coercively solicited written statements, and threatened employees with legal process. The record shows that attorney Scott Rozmus met with two employees, John Grunas and Larry Kovaleski, in order to investigate the incidents involving Lindquist's threats. The record shows that the meetings took place on May 29, 1996.

Grunas testified that he met with Rozmus in Linstrom's office at the Taylor facility and that Rozmus read from a prepared statement which essentially assured him against any reprisals because of his participation in the interview (R. Exh. 7). According to Grunas, Rozmus asked his "opinion of the Union . . . where the Union meetings were, what type of establishment and if the Union representative promised [them] jobs" and whether Lindquist organized the Union (Tr. 169-171). Grunas initially responded to Rozmus' questions that he did not know about Lindquist starting the union drive or that he had no opinion about the Union. Grunas finally told

Rozmus that he did not want to answer any more questions. Rozmus then proceeded to search among his papers for the statement written by Grunas about Lindquist's conduct (R. Exh. 3). Grunas, confronted with his statement, said that he would not testify or consent to that, because he felt having been misled. Grunas explained that he believed that Lindquist had not made any actual threats, but that he was merely joking at union meetings when he spoke about "stringing people up" or "flattening tires."

I found Grunas' testimony credible, his recollection appeared firm and consistent under cross examination. Rozmus conceded in his testimony that he interrogated Grunas about Lindquist's role during the union campaign, although he denied asking him what he thought of the Union. His account of the meetings was somewhat verbose and did not impress me as reliable as that of Grunas. The record clearly shows that the questioning was not limited to Lindquist's alleged threats. To be sure, Rozmus' purpose was to prepare the Company's defense of the unfair labor practice allegations, and he accordingly read a prepared statement designed to establish safeguards in *Johnnie's Poultry Co.*, 146 NLRB 770 (1964), enf. denied 334 F.2d 617 (8th Cir. 1965). However, the questioning included the probing of the employee's state of mind about the Union and delved into areas unrelated to the stated purpose of the inquiry. Grunas obviously felt coerced and did not want to answer any more questions. I accordingly find that the Respondent failed to adhere to the safeguard's of *Johnnie's Poultry*, supra, and engaged in coercive interrogations in violation of Section 8(a)(1) of the Act.

The allegations that the Respondent coercively solicited written statements and threatened legal action were based on the testimony of Larry Kovaleski who testified about a meeting with Rozmus on about May 29, 1996. Kovaleski testified that Rozmus showed him a written document of assurances against reprisals and that he signed the statement (R. Exh. 4). Rozmus then showed him another document containing a detailed description of Lindquist's conduct including the alleged threats, and asked him to sign it. Kovaleski testified that he refused to sign the statement, "because it was lies" (Tr. 109). Rozmus said that this was his specialty and no one ever refused to sign an affidavit before. When Kovaleski continued to refuse to sign the document, Rozmus said, "what if I brought you into court" and "had you put in jail." Kovaleski became angry at this point and refused any further cooperation and left. Kovaleski testified that Rozmus thereafter called him at home requesting him to sign the affidavit, but Kovaleski hung up the telephone.

Rozmus testified that he met with Kovaleski on May 29, 1996, that he read a statement of assurances against reprisals and asked Kovaleski to sign it (R. Exh. 4). According to Rozmus, Kovaleski signed two such statements, one containing the May 22, 1996 reference and the other without it. The record contains only one of the signed statements. Rozmus was not certain what happened to the other signed statement. Rozmus conceded that he also asked Kovaleski to sign a prepared statement in the form of an affidavit summarizing the alleged threats made by Lindquist (R. Exh. 4). Rozmus testified at length as to why Kovaleski refused to sign the affidavit. Rozmus repeated Kovaleski's fears and apprehension about signing the document. Rozmus denied placing a telephone call to Kovaleski's home with a request to sign the affidavit, although he said that at the meeting he had asked

him "to do was to go home and speak to his family" and sign a statement that he agreed was true (Tr. 397).

Rozmus denied threatening Kovaleski with jail or presenting himself as an expert who had never been refused the signature on a statement. Rozmus admitted telling Kovaleski during the prior telephone conversation on May 22, 1996, that there would be an objections hearing and that he might be called to testify in that hearing whether he signed a document or not. Rozmus conceded that Kovaleski had already indicated during the telephone call his unwillingness to sign any statement involving Lindquist, stating that "he would plead the Fifth or go to jail rather than testify because he was concerned about his safety and his family's safety." In short, Rozmus' version of the scenario shows that despite Kovaleski's unequivocal refusal to sign a statement, he was urged repeatedly to do so subsequent to the telephone conversation.

Rozmus' lengthy responses did not impress me for their accuracy or reliability. I don't believe the story about Kovaleski's signing of the two affidavits. Although Rozmus corroborated some of the events described by General Counsel's witnesses, Rozmus' testimony carefully avoided the factual bases in support of the crucial allegations. For example, I doubt that Kovaleski would speak about going to jail or plead the Fifth, if he were merely asked to sign a document. Kovaleski may not have been accurate in some minor aspects of his testimony or the details of his earlier conversation with Cassidy in the presence of Linstrom, but I find his testimony credible and reliable, particularly as it was corroborated in many respects by Rozmus' testimony. I accordingly find, as alleged in the complaint, that the Respondent coercively solicited written statements from the employee and threatened legal process if he persisted in refusing to sign such statements. Despite the assurances in *Johmie's Poultry* such conduct went too far and clearly violated Section 8(a)(1) of the Act.

The next allegations, i.e., improved working conditions in response to grievance solicitations, was not proven in this record. The record shows that the drivers were furnished with new trucks in May 1996. The testimony of Anthony Buscareno, corporate logistics manager, and Tim Linstrom showed that the acquisition of new vehicles with air conditioning at the Taylor facility was unrelated to the union campaign. Their testimony showed that the trucks were leased and that their leases were due to expire in May 1996. Indeed, negotiations for the new equipment preceded the union drive. The Company signed leases on April 30, 1996, prior to the May 1996 solicitations described above (R. Exhs. 13, 14). The Respondent's testimony in this regard, as well as the documentary evidence is uncontradicted. I therefore dismiss this allegation in the complaint.

Tim Linstrom in his capacity as warehouse manager, is alleged to have threatened employees with discharge following Lindquist's discharge on May 31, 1996. Kovaleski's testimony in this regard shows that Linstrom came out of the office at the time of Lindquist's discharge and turned to Kovaleski saying, "don't worry about it Larry, you voted for the Union, you might be next." Linstrom's testimony in this regard was not an unequivocal denial, but "I don't recall saying that to Larry" (Tr. 277). When asked again, he said, "I don't believe I said that to anyone." Under these circumstances, I credit Kovaleski and find in agreement with

the General Counsel that the Respondent violated Section 8(a)(1) of the Act.

Linstrom's replacement as warehouse manager is alleged to have violated Section 8(a)(1) of the Act, because the Respondent was prompted by Linstrom's failure to prevent unionization and his refusal to commit unfair labor practices. According to the Respondent, the record contains no evidence that Linstrom was ordered or advised to commit unfair labor practices. While management and attorneys met frequently with him to advise him during the union campaign, Linstrom made it clear in his testimony that the Respondent did not instruct him to threaten employees, or make promises or to question employees about their union activity. Linstrom's instructions were "to talk with the employees, try to point out what advantages they had by not having a union" (Tr. 264). The record does not directly show that Linstrom was expected to commit unfair labor practices. However, the record is clear that Linstrom was expected to turn the union situation around in favor of the Company or he would lose his job.

The Respondent's chief executive, DeAngelo, admittedly told the assembled employees during preelection meetings that "Tim's role would change in that kind of environment," i.e., union environment (Tr. 502). When challenged by an employee whether this meant that Linstrom would no longer have a job if the Union won, DeAngelo admittedly answered carefully, saying "that Tim would probably not be functioning in the capacity as a warehouse manager." Although the Respondent argues that the basis for these statements is that Linstrom was perceived as too lenient to manage in a unionized environment, the message to the employees was clear. Linstrom would be replaced if the employees selected the Union as their bargaining agent.

The Respondent nevertheless argues that Linstrom was replaced because he possessed poor managerial skills and that Linstrom's most recent performance review prepared prior to the union campaign was critical of his management ability. The record, however, shows that the Respondent had no plans to demote him at that time. Moreover, the record is replete with testimony that management expected him turn the momentum in favor of the Union around or he would have to pay with his management job. Linstrom testified that at each of the weekly meetings with attorney Dolin and Cassidy, he was told "that it is up to him to turn it around, to get the employees to vote no" (Tr. 208). The employee witnesses all testified that DeAngelo made it clear at the employee meetings that if the employees voted the Union in, Linstrom would be replaced as the manager.

The record shows that management informed Linstrom on July 19, 1996 that a replacement had been hired and that Linstrom was expected to train him. Although management indicated that Linstrom would be transferred to another job or that Tony Buscareno would place him into another operation of the Company, no firm offer was ever made. On July 25, 1996, DeAngelo left a telephone message which confirmed that management attributed the failure to stop the union drive to Linstrom's lack of managerial ability (G.C. Exh. 4). DeAngelo subsequently called Linstrom at the suggestion of his lawyer and retracted the accusations. On August 19, 1996, Linstrom's replacement reported for work. As instructed, Linstrom trained his replacement. By that time, Linstrom had informed management that he was leaving the

Company's employment effective August 30, 1996 (R. Exh. 10). The record is unclear as to whether the Respondent would have employed Linstrom after his replacement as a manager. I accordingly find that the record does not show that the Company actually fired Linstrom. However, he was clearly replaced as warehouse manager because of his failure to prevent the union drive among the employees. According to *Parker-Robb Chevrolet*, 262 NLRB 402 (1982), an employer violates Section 8(a)(1) of the Act for discharging a supervisor for failure to prevent unionization. But see, *Be-Lo Stores*, 318 NLRB 1 (1995). In the present case, the Respondent's actions were so blatant, albeit without an affirmative showing of any directions to commit unfair labor practices, that the effect on the employees was clearly coercive. The Respondent made it clear that Linstrom was too lenient a supervisor in a unionized environment. And even though the record shows that the Respondent carefully instructed Linstrom about "Do's & Don'ts" in a union campaign, implicit in blaming Linstrom for failing to stop the Union was that he failed to go as far as his supervisor, Cassidy, in threatening employees and coercively interrogating them about the Union as he accompanied the employees in their trucks. Under these circumstances, I find a violation of Section 8(a)(1) of the Act.

The 8(a)(3) Allegation

The final allegation in the complaint concerns the discharge of Darryl Lindquist as a violation of Section 8(a)(3) and (1) of the Act. The General Counsel clearly established that this employee was the principal union organizer, and that the Respondent knew that he started the union drive. Indeed the Respondent admitted that it was aware prior to the election of May 10, 1996, that Lindquist was responsible for organizing the Union at the Taylor warehouse. Thereafter, the Respondent conducted an exhaustive investigation of Lindquist's conduct during the union campaign. As a result, Lindquist was discharged on May 31, 1996. The discharge was motivated by union animus, according to the General Counsel.

When Cassidy accompanied Grunas on May 9, 1996, Cassidy asked Grunas about the Union. On that occasion Grunas described the conversations concerning the Union among the employees, notably Timothy Nelson and Darryl Lindquist. Several days later, Linstrom and Cassidy had the conversation with Kovaleski where he was interrogated about the threats made by Lindquist and requested to make a note of those statements. Kovaleski complied with the instructions and submitted a handwritten note to Linstrom (G.C. Exh. 6). Although Kovaleski testified that Lindquist's statements were made in jest and so tried to inform Cassidy, the written statement does not reflect that aspect. On the same day, Cassidy had a telephone conversation with Grunas, where Cassidy made the same request, namely to write down any threats made by Lindquist.

According to Grunas' testimony he similarly told Cassidy that Lindquist's statements were made in jest. Nevertheless, Grunas wrote down the statements on a piece of paper which he handed to Linstrom (G.C. Exh. 3). Both handwritten statements described similar statements, namely that Lindquist promised to "kick ass" of fellow employees and flatten tires of company trucks.

Employee Timothy Nelson testified about Lindquist's conduct and contradicted the prior employees' testimony that Lindquist made these statements in jest. Nelson stated that he was concerned about his family, his new home and his car, and that he had a lot to lose. Explaining that he was a member of the Union, that he is no longer employed by the Respondent, and that he is not necessarily a dedicated company man, Nelson unequivocally testified that Lindquist said, "[W]e could flatten tires, damage personal property, and kick ass" (Tr. 439). Nelson executed an affidavit on May 10, 1996 for the Respondent in which he summarized Lindquist's conduct (R. Exh. 24).

On May 23, 1996, Denise Longtin, resource manager, had a meeting with Lindquist about the threats reported to management. During the ensuing questioning by Longtin, Lindquist became angry, he used intemperate language and refused to cooperate. Longtin reported Lindquist's intemperate behavior, his use of four letter words to management. Although Lindquist denied using the f. . . words he admitted saying the following after Longtin persisted in questioning his alleged misconduct (Tr. 32):

And I said, this is a bunch of shit, and I said you're shit, this is bull shit. I looked at my boss and I said, what the hell are you doing? This is a bunch of shit.

I believe Longtin that Lindquist used obscene language during the interview and acted in an insubordinate manner. Lindquist's demeanor during this interview certainly justified the Respondent's belief that this employee was capable of serious threats to injure other employees or to damage trucks.

The Respondent's position is that it discharged Lindquist for two reasons, the threats among his coworkers and his intemperate reaction during the meeting with Longtin. The General Counsel's argument is persuasive that the Respondent was initially motivated by union animus in discharging Lindquist. However, the Respondent's reaction to Lindquist's conduct was not unreasonable. The Respondent relied on three written statements showing that Lindquist not only threatened fellow employees about the Union, but he also threatened company property. This, coupled with his abusive and intemperate behavior during the meeting with Longtin, supports the Respondent's position that it would have discharged the Employee even in the absence of his union activity. *Wright Line*, 251 NLRB 1083 (1980). Although several employees honestly believed and so testified that Lindquist was merely joking when he made these statements, others, including employee Nelson, were not so convinced and disagreed. Lindquist's confrontational attitude and his liberal use of bad language during the interview with Longtin did not help his situation. It certainly convinced me that the Respondent had good reason to believe that his statements were not mere jokes, but that these remarks could be interpreted as threats. I, therefore, find that the Respondent did not violate Section 8(a)(3) and (1) of the Act.

Lindquist was accordingly no longer an employee of the Company at the time of the election on July 26, 1996, his name was properly omitted from the election eligibility list.

CONCLUSIONS OF LAW

1. The Respondent, FlorStar Sales, Inc. is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Local 337 International Brotherhood of Teamsters, AFL-CIO is a labor organization with the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) by each of the following acts and practices.

(a) Soliciting grievances from employees during a union campaign.

(b) Coercively interrogating its employees on numerous occasions about the Union.

(c) Threatening employees with loss of jobs if the Union were successful.

(d) Coercively soliciting written statements from employees about other employees.

(e) Threatening employees with legal process if they refused to sign written statements about other employees.

(f) Threatening employees with discharge, because they voted for the union.

(g) Removing and replacing, after repeated threats to do so, Timothy Linstrom as warehouse manager, because he failed to prevent unionization.

4. The outcome of the election was not affected by the ballot of Darryl Lindquist.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having unlawfully removed and replaced Timothy Linstrom as manager because he failed to prevent unionization, it must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹

ORDER

The Respondent, FlorStar Sales, Inc., Livonia, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Soliciting grievances from employees during a union campaign.

(b) Coercively interrogating its employees about the Union.

(c) Threatening employees with loss of jobs because of the Union.

(d) Coercively soliciting written statements from employees about other employees.

(e) Threatening employees with legal process if they refused to sign written statements about other employees.

(f) Threatening employees with discharge, because they voted for the union.

(g) Removing and replacing, after repeated threats, its manager, because he failed to prevent unionization.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Timothy Linstrom full reinstatement to the job or jobs he would have occupied had he not been unlawfully removed or, if that job or those jobs no longer exist, to substantially equivalent positions, without prejudice to his seniority or any other rights or privileges previously enjoyed, as more fully described in the remedy section of this decision.

(b) Make Linstrom whole for any loss of earnings and other benefits suffered as a result of the unlawful action against him in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful action and notify Linstrom in writing that this has been done and that the discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel cards and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Chicago, Illinois, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 10, 1997.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT engage in any of the following acts and practices:

- Soliciting grievances from employees during a union campaign,
- Coercively interrogating its employees about the Union,
- Threatening employees with loss of jobs because of the Union,

Coercively soliciting written statements from employees about other employees,

Threatening employees with legal process if they refused to sign written statements about other employees,

Threatening employees with discharge, because they voted for the union,

Removing and replacing supervisors because they failed to prevent unionization.

WE WILL NOT in any like or related manner interfering with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Timothy Linstrom full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, as more fully described in the remedy section of the decision in this case.

WE WILL make Timothy Linstrom whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful removal of Timothy Linstrom, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the removal will not be used against him in any way.

FLORSTAR SALES, INC.